

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

**333 WEST WACKER DRIVE**

**26TH FLOOR**

**CHICAGO, IL 60606**

(312) 857-7070

FACSIMILE

(312) 857-7095

www.kelleydrye.com

HENRY T. KELLY

EMAIL: HKelly@KelleyDrye.com

NEW YORK, NY  
WASHINGTON, DC  
LOS ANGELES, CA  
STAMFORD, CT  
PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICE  
MUMBAI, INDIA

December 10, 2014

**Via ECFS**

Marlene H. Dortch  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: *Connect America Fund, WE Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; High-Cost Universal Service Support, WC Docket No. 05-337; Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Federal-State Joint Board on Universal Service, CC Docket No. 96-45***

Dear Ms. Dortch:

Peerless Network, Inc. (“Peerless”) requests that the Commission take immediate action to rectify AT&T Corp.’s and Verizon’s “self-help” in refusing to pay access charges associated with interexchange calls that originate with a LEC and its VoIP partner(s), as well as other undocumented reasons. Peerless requests that the Commission declare, again, that Sections 51.903(d), 51.913(b), and 69.106 of the Commission’s Rules require interexchange carriers to compensate competitive LECs for tariffed end office switching access functions provided by LECs and their VoIP partners for over-the-top IP-originated and terminated traffic (“VoIP OTT”). The Commission should clearly state that access charges are due for each function that the LEC and VoIP partner perform. The Commission should include this declaratory ruling in the context of the pending request for a declaratory ruling of Level 3 Communications, Inc. (“Level 3”) and Bandwidth.com, Inc. (“Bandwidth”) seeking affirmation that competitive LECs may charge and collect end office switching access charges for over-the-top VoIP originated or terminated calls regardless of whether the LEC owns or operates the last mile physical facilities

Marlene H. Dortch  
Federal Communications Commission  
December 10, 2014  
Page Two

connecting to the end user VoIP subscriber.<sup>1</sup> Peerless supports Level 3 and Bandwidth on this matter, and writes to provide the Commission with additional information relating to interexchange carriers' obligations relating to over-the-top IP-originated traffic when a third-party provides the calling parties' automatic number identifier ("ANI"). As discussed below, AT&T and Verizon claim that carriers that have not issued telephone numbers to the end users may not receive originating end office switched access charges even though the local exchange carrier provides local switching service. Peerless requests that the Commission squarely reject AT&T and Verizon's position.

The Commission should make this declaration on an expedited basis. In May 2014, the Tenth Circuit "rejected" AT&T's challenge to the FCC's *USF/ICC Transformation Order*<sup>2</sup> which specifically affirmed the FCC's decision to permit CLECs and their VoIP partners to collect access charges. Notwithstanding this decision, AT&T and Verizon disregard the FCC's findings to not only refuse to pay access charges currently billed by CLECs and their VoIP partners, they use the VoIP OTT intercarrier compensation rules to leverage disputes on other access charge scenarios that do not apply, and have no basis in fact or law. The FCC's continued lack of clarification on this issue creates market uncertainty that the *USF/ICC Transformation Order* was specifically intended to avoid. The Commission should act quickly and not permit interexchange carriers to rely on false claims to excuse their obligation to pay switched access charges.

Beginning in early 2012, shortly after and notwithstanding the FCC's *USF/ICC Transformation Order*, Verizon and AT&T Corp. began to significantly increase the volume of disputes for Peerless access charges for the end office services provide by Peerless and its VoIP partners. Subsequently, both Verizon and AT&T then began to not only refuse to pay access charges on VoIP OTT traffic, but invented new disputes for access charges they had previously paid, resulting in a claimed "claw back" of prior payments. For example, Verizon has asserted that "over-the-top VoIP providers do not provide end-office switching"<sup>3</sup> and, apparently then, competitive LECs that partner with VoIP providers for over-the-top IP-originated traffic are not entitled to any compensation. Verizon has recently refused to pay all switching access

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<sup>1</sup> See, e.g., Letter from John T. Nakahata, counsel for Level 3 Communications, LLC, and Tamar Finn, counsel for Bandwidth.com, Inc. to Marlene H. Dortch, Secretary, WC Dkt. Nos. 10-90, 05-337, CC Dkt. Nos. 01-92, 96-45, GN Dkt. No. 09-51 (filed Aug. 8, 2013).

<sup>2</sup> *Connect America Fund et al.*, WC Dkt. Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17676-77, 17930-31, ¶ 970 (rel. Nov. 18, 2011) ("*USF/ICC Transformation Order*" or "*Order*"), *aff'd In re F.C.C. 11-161*, 753 F.3d 1015, 1147-48 (10<sup>th</sup> Cir. 2014).

<sup>3</sup> See, e.g., Letter from Alan Buzacott, Executive Director Federal Regulatory Affairs Verizon, to Marlene H. Dortch, Secretary, WC Dkt. Nos. 10-90, 05-337, CC Dkt. No. 01-92, 96-45, GN Dkt. No. 09-51 (filed May 6, 2013).

Marlene H. Dortch  
Federal Communications Commission  
December 10, 2014  
Page Three

compensation (refusing both end office compensation and tandem compensation) for over-the-top IP traffic from Peerless and its VoIP partners. And, AT&T insists that IP traffic received from competitive LECs and their VoIP providers amounts to mere tandem transit services: “We note[ ] that the limited functionality provided by the CLECs in the middle of those over-the-top VoIP calls more closely resembles tandem switching, and we emphasize that AT&T is and has been paying the CLECs for this traffic at the tandem switching rate.”<sup>4</sup> As a result, AT&T continues to refuse payment for the end office switched access services they receive.

AT&T and Verizon’s refusal to pay for switched access compensation for the functions provided on over-the-top IP traffic is contrary to the Commission’s *USF/ICC Transformation Order* relating to transitional intercarrier compensation for VoIP traffic, and is contrary to the Commission’s rules promulgated from that Order. Further, AT&T and Verizon’s “self-help” refusal to pay for functions performed on over-the-top VoIP traffic delivered to their points of presence (“POP”) contradicts the Commission’s objective to reduce disputes relating to VoIP-PSTN traffic,<sup>5</sup> ignores the plain language of the VoIP Symmetry Rule and Commission declarations<sup>6</sup> that a competitive LEC, partnered with a VoIP provider must be compensated for the functions they perform. Peerless urges the Commission to reaffirm its commitment relating to transitional compensation for VoIP traffic, and to make a clear declaration that interexchange carriers must pay compensation for the functions performed by competitive LECs and their VoIP partners on over-the-top IP traffic by tariffed rate element.

**I. Interexchange Carriers’ Refusal to compensate Competitive LECs and their VoIP Partners is Contrary to the Commission’s Orders, Rules and Policies**

**A. The *USF/ICC Transformation Order* and Commission Rules Require End Office Switching Access Compensation by Rate Element**

The *USF/ICC Transformation Order* finds that an interexchange provider must compensate competitive LECs and their VoIP partners for IP traffic and does not create any categorical exemptions from compensation for over-the-top IP traffic. Instead, the *Order* concludes that carriers may collect access service charges on calls that originate or terminate via VoIP provider.<sup>7</sup> The Commission explains that its transitional intercarrier VoIP compensation

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<sup>4</sup> Letter from Christi Shewman, counsel for AT&T Corp., to Marlene H. Dortch, Secretary, WC Dkt. Nos. 10-90, 07-135, 05-337, 03-109, CC Dkt. Nos. 01-92, 96-45, GN Dkt. Nos. 09-51, WT Dkt. No. 10-208 (filed Feb. 21, 2014), at pg. 1-2.

<sup>5</sup> *USF/ICC Transformation Order*, ¶946.

<sup>6</sup> *See id.*, at ¶¶ 968- 970.

<sup>7</sup> *Id.*, at ¶¶ 968-970.

Marlene H. Dortch  
Federal Communications Commission  
December 10, 2014  
Page Four

conclusions were intended to “mak[e] clear that origination and termination charges may be imposed under our transitional intercarrier compensation framework, including when an entity uses Internet Protocol facilities to transmit such traffic to or from the called party’s premises.”<sup>8</sup>

The *USF/ICC Transformation Order* further states that interexchange carriers must compensate competitive LEC and their VoIP partners for tariffed switching access charges based on the functions and services provided, regardless of the type of IP traffic originating from the called party’s premises.<sup>9</sup> The *Order* explains that “under the Commission’s historical approach in the access charge context, when relying on tariffs, LECs have been permitted to charge access charges to the extent that they are providing the functions at issue.”<sup>10</sup> The *USF/ICC Transformation Order* adopts this same approach for VoIP-PSTN traffic: “we adopt rules that permit a LEC to charge the relevant intercarrier compensation **for functions performed by it and/or** by its retail VoIP partner, regardless of whether the functions performed or the chronology used correspond precisely to those used under a traditional TDM architecture.”<sup>11</sup>

The Commission has repeatedly affirmed that compensation is due and must be paid based on the tariffed services a competitive LEC and VoIP partner provide. For example, in its *Feb. 3 Clarification Order*, the Commission stated that, “[w]ith regard to ‘toll’ traffic (interstate and intrastate calls), the Commission adopted rules specifying that the default charges for ‘toll’ VoIP-PSTN traffic will be equal to interstate access rates applicable to non-VoIP traffic, **both in terms of the rate level and rate structure.**”<sup>12</sup> And the Commission re-iterated the point that VoIP-traffic end office compensation is subject to the functions provided by competitive LECs and its partner VoIP providers in its *Feb. 27 Clarification Order*.<sup>13</sup> And, yet again in its *Second*

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<sup>8</sup> *Id.* at ¶ 969.

<sup>9</sup> *Id.* at ¶ 945.

<sup>10</sup> *Id.* at ¶ 970.

<sup>11</sup> *Id.* (emphasis added).

<sup>12</sup> *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, Order, WC Dkt. Nos. 10-90, 07-135, 05-337, 03-109, CC Dkt. Nos. 01-92, 96-45, GN Dkt. Nos. 09-51, WT Dkt. No. 10-20827 FCC Rcd. 3070 (rel. Feb. 3, 2012) (the “*Feb. 3 Clarification Order*”), at ¶ 22 (emphasis added).

<sup>13</sup> *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund; Universal Service Reform – Mobility Fund*, Order, WC Dkt. Nos. 10-90, 07-135, 05-337, 03-109,

Marlene H. Dortch  
Federal Communications Commission  
December 10, 2014  
Page Five

*Order on Reconsideration*, the Commission stated that “the rules make clear that “functions provided by a LEC as part of transmitting telecommunications between designated points using, in whole or in part, technology other than TDM transmission’ count equally as access services for purposes of section 51.903 of the Commission’s rules as those performed in TDM.”<sup>14</sup>

Switched access compensation for IP traffic according to the function – meaning the rate element provided as part of the switching access services – is also embedded in the rules the Commission promulgated as a result of the *USF/ ICC Transformation Order*. Section 51.913(b) of the Commission’s rules permit “a local exchange carrier ... to assess and collect the full Access Reciprocal Compensation charges” for the “functions provided by a LEC [and its VoIP partner] as part of transmitting telecommunications between designated points using, in whole or in part, technology other than TDM transmission in a manner that is comparable to a service offered by a local exchange carrier ....”<sup>15</sup> The Commission explained that Section 51.913(b) permits recovery of access compensation “even if the relevant origination or termination functions are performed by the LEC’s retail VoIP provider partner – which, of necessity, would be performing these functions in IP, rather than TDM.”<sup>16</sup>

The Commission’s rules also define “end office access service” to include the routing of interexchange telecommunications traffic to or from the called party’s premises ... regardless of the specific functions provided or facilities used”<sup>17</sup> or, alternatively, “[a]ny functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier.”<sup>18</sup> To drive home the point that the function provided by the competitive LEC and VoIP provider is compensable by rate element performed, Section 51.903(d)(3) goes on to list examples of rate elements that are compensable and then specifically states that each of these rate elements are compensable for a “non-incumbent local exchange carrier” performing “**any** functionally equivalent access service”:

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CC Dkt. Nos. 01-92, 96-45, GN Dkt. Nos. 09-51, WT Dkt. No. 10-208, 27 FCC Rcd 2142 (rel. Feb. 27, 2012) (the “Feb. 27 Clarification Order”), at ¶ 3.

<sup>14</sup> *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund, Second Order on Reconsideration*, WC Dkt. Nos. 10-90, 07-135, 05-337, 03-109, CC Dkt. Nos. 01-92, 96-45, GN Dkt. Nos. 09-51, WT Dkt. No. 10-208, 27 FCC Rcd 4648 (rel. Feb. 27, 2012) (the “*Second Order on Reconsideration*”), at ¶ 40.

<sup>15</sup> 47 C.F.R. § 51.913(b).

<sup>16</sup> *Second Order on Reconsideration*, at ¶ 40.

<sup>17</sup> 47 C.F.R. § 51.903(d)(2).

<sup>18</sup> 47 C.F.R. § 51.903(d)(3).

Marlene H. Dortch  
Federal Communications Commission  
December 10, 2014  
Page Six

... End Office Access Service rate elements for an incumbent local exchange carrier include the local switching rate elements specified in § 69.106 of this chapter, the carrier common line rate elements specified in § 69.154 of this chapter, and the intrastate rate elements for functionally equivalent access services. End Office Access Service rate elements for an incumbent local exchange carrier also include any rate elements assessed on local switching access minutes, including the information surcharge and residual rate elements. End office Access Service rate elements for a non-incumbent local exchange carrier include any functionally equivalent access service.<sup>19</sup>

Further, the Commission's note on this rule again stresses the point that end office compensation is compensable by rate element for the service performed: "For incumbent local exchange carriers, residual rate elements may include, for example, state Transport Interconnection Charges, Residual Interconnection Charges, and PICCs. For non-incumbent local exchange carriers, residual rate elements may include any functionally equivalent access service."<sup>20</sup> And, the Commission's switching access compensation rules likewise discuss compensation by rate element provided.<sup>21</sup>

It's clear that a categorical exclusion of all end office switched access services for over-the-top IP traffic, as Verizon would apparently have, disregards the Commission's *USF/ ICC Transformation Order*, rules and directives. Likewise, a categorical exclusion of *all* end office switched access services if even one TDM end office switched access rate element is not provided also disregards the Commission's directives. Any approach that fails to compensate a competitive LECs and its VoIP partner for each rate element that is provided and corresponds to TDM-originated end office switched access services should be squarely rejected in a clear Commission declaration.

**B. End Office Switching Access Compensation by Rate Element Furthers the Commission's Goals of Encouraging IP-to-IP Interconnection and a Transition to IP Networks.**

A Commission declaration confirming that interexchange carriers must compensate competitive LECs and their VoIP partners by the functions and rate elements of end office

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at note of paragraph (d).

<sup>21</sup> *See, e.g.,* 47 C.F.R. § 69.106 (separately listing rate elements for local switching rate elements).

Marlene H. Dortch  
Federal Communications Commission  
December 10, 2014  
Page Seven

switching access service provided on IP-originated traffic will further the Commission's IP-transition goals.

The *USF/ICC Transformation Order* makes clear that the transitional VoIP-PSTN compensation framework is intended to further the Commission's goals relating to the transition to IP. The *Order* states that "the current uncertainty and associated disputes are likely deterring innovation and introduction of new IP services to consumers."<sup>22</sup> The Commission concludes that its transitional VoIP-PSTN framework will permit carriers to invest in IP without incurring a penalty: "[w]e anticipate that the reforms we adopt will further promote the deployment and use of IP networks ... [w]e also make clear that even while our FNPRM is pending, we expect all carriers to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic."<sup>23</sup> As a result, in the switched access context, the Commission adopted the VoIP Symmetry Rule to promote IP investment – not penalize it as Verizon and AT&T's interpretation appears to do: "we allow providers that have undertaken or choose to undertake such deployment the same opportunity, during the transition, to collect intercarrier compensation under our prospective VoIP-PSTN intercarrier compensation regime as those providers that have not yet undertaken that network conversion."<sup>24</sup>

AT&T and Verizon's approach to IP end office switched access would penalize carriers who have made investments in developing an IP network by excluding rate elements that are functionally equivalent to TDM because certain other rate elements are not provided. In effect, AT&T and Verizon would categorically penalize competitive LECs who partner with VoIP providers to provide many of the functions associated with TDM end office switched access, but not all. For example, AT&T's approach withholds payment for some end office switched access rate elements and functions provided in IP traffic because other functions are not supposedly provided and, in Verizon's case, its approach withholds all payment for all over-the-top IP traffic. Under the Commission's findings in the *USF/ICC Transformation Order* and Commission rules, competitive LECs and their VoIP partners must be compensated for each end office switched access function and rate element they perform. A Commission declaration rejecting AT&T and Verizon's categorical exclusion to compensation for end office switched access services will further encourage investment in IP infrastructure by giving the industry assurances that the functions and rates elements that they provide in IP will be compensated.

The Commission has already found that a competitive LEC and its VoIP partner should be compensated for the functions that they perform. The Commission should clarify that these

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<sup>22</sup> *USF/ICC Transformation Order*, at ¶393.

<sup>23</sup> *Id.* at ¶42.

<sup>24</sup> *Id.* at ¶ 968.

Marlene H. Dortch  
Federal Communications Commission  
December 10, 2014  
Page Eight

functions must be compensated on a rate element by rate element base without delay to ensure that competitive LECs and their VoIP partners are not disadvantaged by their decision to transition to IP.

**II. The *USF/ICC Transformation Order* and Commission rules do not Limit IP-Originated End Office Switched Access Compensation to Circumstances Where the Competitive LEC Provides the Calling Parties' ANI**

The Commission should also confirm that an interexchange carrier may not deny end office switched access compensation where the ANI for the traffic at issue is not associated with the competitive LEC. AT&T and Verizon have taken the position that payment of end office switched access is limited to calling parties using Peerless ANIs. The apparent basis for this position is that some interexchange carriers rely on ANI information to distinguish tandem transit from end office traffic. However, there is no technical or Commission directive that requires this practice. On the contrary, the directives of the *USF/ICC Transformation Order* and Commission rules state that AT&T and Verizon must pay for switched access compensation for the functions provided on IP traffic.<sup>25</sup> These functions occur for over-the-top IP traffic irrespective of whether or not the competitive LEC provides the ANI.

Supposed “ANI matching” to establish whether end office switched access compensation should be paid is contrary to the Commission’s directives to pay for the functions actually performed by a competitive carrier and its VoIP partner. For example, there are frequently circumstances where a PBX or other arrangements result in a calling party’s number which is not associated with either Peerless or its VoIP partner in the local exchange routing guide (“LERG”). However, Peerless still performs end office switched access functions on this call, such as the functions necessary for 911 call completion, Caller ID services and CNAM dips, and functions to ensure that LIDB works. Peerless also works to properly jurisdictionalize the call for billing purposes.

Requiring “ANI matching” is also inconsistent with the Commission’s recent trials permitting VoIP providers to have numbers issued in their own name, rather than with a partnered competitive LEC provider. The Commission VoIP numbering trials are now complete and found to be successful.<sup>26</sup> This success is based principally on the lack of VoIP

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<sup>25</sup> *USF/ICC Transformation Order*, at Section XIV.

<sup>26</sup> See generally *Numbering Policies for Modern Communications et al.*, Notice of Proposed Rulemaking, Order, and Notice of Inquiry, WC Docket No. 13-97 et al., 28 FCC Rcd 5842 (2013) (“*Direct Access Order*”).



Marlene H. Dortch  
Federal Communications Commission  
December 10, 2014  
Page Nine

interconnection and billing issues.<sup>27</sup> For example, John Viclosky, with the FCC's Wireline Bureau noted that:

In terms of VoIP interconnection, Vonage, in particular, gave us some good info [from the trials] that we found very helpful. They'd been able to exchange traffic with both AT&T and Verizon through an existing agreement that they had with Peerless. They noted that the trial actually facilitated their efforts to negotiate VoIP interconnectional agreements with carriers and multiple system operators.<sup>28</sup>

However, AT&T and Verizon's insistence on "ANI matching" raises the likelihood that, in the future, interexchange carriers will refuse compensation to a competitive LEC for switched access services provided on OTT IP traffic where the competitive LEC's VoIP partner provides the ANI. Such a result would be inconsistent with the Commission's conclusion that a competitive LEC should be compensated for the switched access functions that it provides on over-the-top IP originated and terminated traffic.

The Commission should not allow interexchange carriers to forgo payment for the services and functions they receive based on an out-dated practice of matching the calling parties' ANI to the competitive LEC that did provide the end office switching function. Interexchange carriers receive IP traffic containing all of the information necessary to jurisdictionalize and bill traffic delivered to their POPs, regardless of whether or not the ANI is assigned to the competitive LEC in the LERG and regardless of whether or not the competitive LEC's VoIP partner provides the ANI. Interexchange carriers therefore must compensate Peerless and other competitive LECs partnered with VoIP providers, for the end office functions provided regardless of whether the calling party's ANI was issued to the calling party by Peerless. Permitting interexchange carriers to deny compensation based on "ANI matching" would allow interexchange carriers to receive services and end office functions without compensation. The Commission should therefore clarify that interexchange carriers may not deny end office switched access compensation based on whether the calling parties' ANI assignment matches the competitive LEC seeking compensation.

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<sup>27</sup> North American Numbering Council Meeting Transcript, 2014 WL 4724325 (FCC rel. Jun. 17, 2014).

<sup>28</sup> *Id.* at \*24.

Marlene H. Dortch  
Federal Communications Commission  
December 10, 2014  
Page Ten

### **III. Peerless and its VoIP Partners Perform End Office Switching Access Functions and should be Compensated for the Tariffed Rate Element for Each Function Performed**

The Commission's approach to switched access charges is not consistent with AT&T and Verizon's categorical rejection of charges, which ignores the fact that competitive LECs and their VoIP providers perform functions which are not compensated under AT&T's tandem-transit approach or Verizon's no-compensation for over-the-top VoIP approach. The Commission has already defined the scope of potential rate elements categories for which interexchange carriers must compensate when end office switched access services are provided,<sup>29</sup> and the Commission has *not* held that each TDM rate element must be present in IP traffic for a competitive LEC and its VoIP partner to receive end office switched access compensation.

In Peerless' case, Peerless performs each of the basic switching functions associated with originated end office switched access services on IP traffic with its VoIP partner. The Commission's *RAO Letter 21* identified the functions associated with local switching, which are applicable to end office switching services:

The basic switching functions are; 1) *Attending* – monitors for off-hook signals; 2) *Control* – determines call destination and assigns call to available line or trunk; 3) *Busy testing* – determines whether the called line/trunk is busy; 4) *Information receiving* – receives control and busy test results; 5) *Information transmitting* – transmits control and busy test results to tell the altering and interconnection functions whether to complete the call; 6) *Interconnection* – connects subscriber line to subscriber line or subscriber line to trunk; 7) *Alerting* – rings the called subscriber's line or other signaling means if the call is destined for another exchange; 8) *Supervising* - monitors for call termination so the line can be released.<sup>30</sup>

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<sup>29</sup> See, e.g., 47 C.F.R. Part 69; *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, First Report and Order*, CC Dkt. Nos. 96-262, 94-1, 91-23, 95-72, 12 FCC Rcd. 15982 (rel. May 16, 1997); *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Board on Universal Services, First Order and Report*, CC Dkt. Nos. 96-262, 94-1, 99-249, 96-45 (rel. May 31, 2000).

<sup>30</sup> Classification of Remote Central Office Equipment for Accounting Purposes, *Responsible Accounting Officer Letter 21*, 7 FCC Rcd. 6075, n.1 (Com. Car. Bur. Sept. 8, 1992) (emphasis in original), petitions for reconsideration and applications for review denied, 12 FCC Rcd. 10061 (1997) (the "*RAO Letter 21*").

Marlene H. Dortch  
Federal Communications Commission  
December 10, 2014  
Page Eleven

The IP switched access services provided by Peerless and its VoIP partner to AT&T and Verizon include the following basic switching functions: 1) Peerless monitors for a Session Initiation Protocol (“SIP”) invite or the Integrated Services Digital Network Initial Address Message (“ISDN IAM”) from the end-user indicating they have initiated a voice call; 2) Peerless’ voice switch analyzes call party number and chooses a termination party based upon its routing tables. The switch port or trunk location is communicated back to the customer equipment for interconnection; 3) Peerless’ voice switch communicates to terminate the current busy status of the called party line or trunk; 4) Peerless’ voice switch receives and interprets communications from the terminating carrier to determine the current busy status of the called party line or trunk; 5) Peerless’ switch transmits busy and other status information back to the originating caller; 6) Peerless’ switch establishes a call path from the ingress line to the egress line and maintains this path for the duration of the call; 7) Peerless’ switch sends a switch message to the call to the called party’s network that is translated by the terminating carrier as an indication to ring the terminating party’s telephone; and 8) Peerless’ switch monitors the in-progress phone call from messages indicating that the terminating party has ended the call. The table below identifies each of the local switching functions associated with end office switching performed by Peerless and its VoIP partner before AT&T and Verizon receive traffic at their POP:

Basic Switching Functions	Peerless Provides	Description
<b>Attending –monitors for off hook signals</b>	Yes	Peerless monitors for a SIP invite or ISDN IAM from the end-user/customer indicating they have initiated a voice call.
<b>Control – determines call destination and assigns calls to an available line or trunk</b>	Yes	Peerless voice switch analyzes called party number and chooses a termination path (line/trunk) based upon its routing tables. The port or TCIC is communicated back to the customer CPE for interconnection.
<b>Busy Testing – determines whether the called line or trunk is busy</b>	Yes	Peerless voice switch communicates to the PSTN via ISUP/SIP to determine the current busy status of the called party line or trunk.

Marlene H. Dortch  
Federal Communications Commission  
December 10, 2014  
Page Twelve

<b>Information Receiving – receives control and busy test results</b>	Yes	Peerless voice switch receives and interprets communications from the terminating carrier via ISUP/SIP to determine the current busy status of the called party line or trunk.
<b>Information Transmitting – transmits control and busy test results to tell the alerting &amp; interconnection functions whether to complete the call</b>	Yes	Peerless switch transmits busy/other status information back to the originating caller via SIP 480/486 or equivalent ISUP message.
<b>Interconnection – connects subscriber line to subscriber line or trunk</b>	Yes	Peerless switch fabric establishes a call path from the ingress line/trunk to the egress line/trunk and maintains this path for the duration of the call.
<b>Attending –monitors for off hook signals</b>	Yes	Peerless monitors for a SIP invite or ISDN IAM from the end-user/customer indicating they have initiated a voice call.
<b>Control – determines call destination and assigns calls to an available line or trunk</b>	Yes	Peerless voice switch analyzes called party number and chooses a termination path (line/trunk) based upon its routing tables. The port or TCIC is communicated back to the customer CPE for interconnection.

The approach advocated by AT&T would deny Peerless compensation for these functions and services. Instead, compensation would be limited to tandem transit rate elements to the exclusion of the end office rate elements performed. And, in Verizon's case, all compensation would be denied merely because the traffic originated as over-the-top IP traffic. Limiting compensation ignores the functions provided by Peerless and its VoIP partner and the Commission's directive to compensate competitive LECs and their VoIP partners for the services they provide.

#### **IV. AT&T and Verizon Have No Valid Rationale to Deny of All Rate Elements for IP-Originated End Office Switched Access Services provided to Them**

Marlene H. Dortch  
Federal Communications Commission  
December 10, 2014  
Page Thirteen

AT&T and Verizon present no valid rationale to refuse to compensate Peerless and its VoIP partner for switching functions performed on over-the-top IP-originated traffic. It is remarkable that their positions were rejected by the Commission in the course of the proceeding leading up to the *USF/ICC Transformation Order*,<sup>31</sup> rejected by the Tenth Circuit, and yet they persist in their refusal to fully compensate (or in Verizon's case, provide any compensation) for end office switched access for over-the-top IP traffic.

AT&T apparently argues that it may deny end office compensation for every rate element associated with end office switch access functions if just one function from the *RAO Letter 21* is not present.<sup>32</sup> As discussed above, the *USF/ICC Transformation Order* and Commission rules require compensation by function and rate element. The absence of one function does not relieve AT&T from its obligation to pay for the other functions it is provided. Furthermore, it would be incorrect to state that Peerless and its VoIP partners do not provide the functional equivalent of interconnection. For example, on IP-originated calls, Peerless establishes and maintains the call path to connect the calling party to the AT&T POP for completion over AT&T's IXC network. Without the switching functions Peerless provides, the call would not create an actual connection to AT&T's POP and no interconnection would occur. Further, these services are distinguishable from tandem transit services because it is Peerless, together with its VoIP partners, that originates the call at the calling party and maintains the call path for the duration of the call (as opposed to merely handing-off the call for call completion), for originating calls.

Second, AT&T's argument concerning double billing is a red herring.<sup>33</sup> Peerless agrees that double billing interexchange carriers for end office switched access services is not permitted.<sup>34</sup> Peerless is not seeking to be compensation for service that it and its VoIP partners do not provide, and is not aware of any circumstance where a third-party could seek compensation for services that Peerless and its VoIP partner provide. The Commission should not permit AT&T and Verizon to deny compensation for services performed based on a generalized concern that other carriers may improperly seek compensation for services that they do not perform.

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<sup>31</sup> See, e.g., Letter from Robert W. Quinn, Jr., AT&T Services, Inc., to Marlene H. Dortch, WC Dkt. Nos. 10-90, 05-337, 07-135, CC Dkt. Nos. 01-92, 96-45, GN Dkt. No. 09-51 (filed Oct. 21, 2011), at 2-3 & n.9

<sup>32</sup> Letter from Christi Shewman, AT&T Services, Inc., to Marlene H. Dortch, Secretary, WC Dkt. Nos. 10-90, 05-337, 07-135, CC Dkt. Nos. 01-92, 96-45, GN Dkt. No. 09-51, WT Dkt. No. 10-208 (filed Feb. 21, 2014).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*, citing *USF/ICC Transformation Order*, at ¶970 and 47 C.F.R. § 51.913(b).

Marlene H. Dortch  
Federal Communications Commission  
December 10, 2014  
Page Fourteen

Third, the Bureau's resolution of YMax's *ex parte* request for clarification does not change the Commission's approach requiring compensation for each function and rate element provided.<sup>35</sup> In the *Feb. 27 Clarification Order*, the Bureau resolved a request from a competitive LEC that sought "the full 'benchmark' rate level, whenever it is providing telephone numbers and some portion of the interconnection with the PSTN."<sup>36</sup> Specifically, YMax sought "guidance from the Commission as to whether the revised rule language in Part 61, specifically, section 61.26(f) permits a competitive LEC to tariff and charge the full benchmark rate even if it includes functions that neither it nor its VoIP retail partner are actually providing."<sup>37</sup> Unremarkably, the Bureau rejected requiring compensation for service and functions not performed and held that "[i]nterpreting the rule in the manner proposed by YMax could enable double billing."<sup>38</sup> This conclusion makes sense because YMax sought compensation for services neither it nor its VoIP provider provided.

Despite the limited ruling in the *Feb. 27 Clarification Order*, AT&T argues that the *Feb. 27 Clarification Order* somehow stands for the Bureau's agreement with the proposition that, "if the physical transmission facilities connecting the IXC and the VoIP service customer are provided in part by one or more unrelated ISPs (as is the case with YMax or 'over-the-top' VoIP providers such as Skype or Vonage), then the LEC and its VoIP service partner are not performing the 'access' function and cannot charge for it."<sup>39</sup> The *Feb. 27 Clarification Order* is devoid of any such declaration and instead once again clearly affirms that end office switched access charges may only be assessed for functions performed.

Lastly, the unilateral decision by AT&T and Verizon to refuse payment for IP end office switched access services ignores the Commission's approach on "self-help" measures. Despite the Commission's guidance and tariffed dispute resolution requirements, AT&T has decided that it will not compensate Peerless for any over-the-top IP end office switched access compensation and Verizon has decided that it will not compensate Peerless for any over-the-top IP traffic. For example, the Commission has long-found that:

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<sup>35</sup> See *Feb. 27 Clarification Order*.

<sup>36</sup> *Id.* at ¶4.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Letter from David L. Lawson, counsel for AT&T Corp., to Marlene H. Dortch, Secretary, WC Dkt. Nos. 10-90, 05-337, 07-135, 03-109, CC Dkt. Nos. 01-92, 96-45, GN Dkt. No. 09-51, WT Dkt. No. 10-208 (filed Feb. 21, 2014).

Marlene H. Dortch  
Federal Communications Commission  
December 10, 2014  
Page Fifteen

[the] self-help approach is contrary to Section 203 of the Communications Act of 1934, as amended, and existing case law. Section 203(c) of the Act specifically forbids carriers from charging or collecting difference compensation than specified in an effective tariff. Tariffs which are administratively valid operate to control the rights and liabilities between the parties. Rates published in such tariffs are rates imposed by law.<sup>40</sup>

This proposition has been repeatedly confirmed. For example, the Commission has stated that “a customer, even a competitor, is not entitled to the self-help measure of withholding payment for tariffed services duly performed but should first pay, under protest, the amount allegedly due and then seek redress if such amount was not proper under the carrier’s applicable tariffed charges and regulations.”<sup>41</sup> And, the *USF/ICC Transformation Order* specifically counsels against self-help by recognizing “the disruptive nature of same providers’ unilateral actions regarding VoIP intercarrier compensation, and ... seek[ing] to prevent such actions here going forward.”<sup>42</sup>

Furthermore, the context of AT&T’s self-help actions, taken together with AT&T’s *ex parte* filings, demonstrates that AT&T is merely seeking to escape all liability relating to the Commission’s interim intercarrier compensation for VoIP traffic for over-the-top IP end office switched access traffic. This is so because AT&T’s *ex parte* filings argue that the Commission may not retroactively declare that end office switched access compensation is due for over-the-top IP-originated and terminated traffic,<sup>43</sup> and AT&T has not properly paid and disputed the tariffed amounts at issue. If the Commission were to adopt AT&T’s position on this issue, interexchange carriers would escape several years of liability despite the Commission’s clear declaration that such compensation is due.

## Conclusion.

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<sup>40</sup> *In re MCI Telecommunication Corporation, American Telephone and Telegraph Company and the Pacific Telephone and Telegraph Company*, Memorandum Opinion and Order, FCC 76-685 (rel. Jul. 30, 1976); *cf. In re All American Telephone Co., E-Pinnacle Communications, Inc., and Chasecom v. AT&T Corp.*, Memorandum Opinion and Order, 26 FCC Rcd. 723 (rel. Jan. 20, 2011), ¶12 (clarifying that self-help is not a *per se* violation of Section 203(c) of the Act but that “[w]e do not endorse such withholding of payment outside the context of any applicable tariffed dispute resolution provisions.”).

<sup>41</sup> *In re Business WATS, Inc. v. American Telephone and Telegraph Company*, Memorandum Opinion and Order, DA 92-1613 (Com. Car. Bur. Rel. Dec. 7, 1992), ¶2.

<sup>42</sup> *USF/ICC Transformation Order*, ¶ 947.

<sup>43</sup> Letter from David L. Lawson, counsel for AT&T Corp., to Marlene H. Dortch, Secretary, WC Dkt. Nos. 10-90, 05-337, 07-135, 03-109, CC Dkt. Nos. 01-92, 96-45, GN Dkt. No. 09-51, WT Dkt. No. 10-208 (filed Feb. 21, 2014).

**KELLEY DRYE & WARREN LLP**

Marlene H. Dortch  
Federal Communications Commission  
December 10, 2014  
Page Sixteen

In sum, Peerless respectfully requests that the Commission issue a declaration without delay in this matter, confirming that Sections 51.903(d), 51.913(b), and 69.106 of the Commission's Rules require interexchange carriers to compensate competitive LECs and their affiliated or unaffiliated VoIP partners for tariffed end office switching access functions that they perform on over-the-top IP traffic regardless of whether all of the functionally equivalent TDM rate elements are provided and regardless of whether the calling parties' ANI matches the competitive LEC seeking the end office switched access compensation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Henry T. Kelly".

Henry T. Kelly  
Counsel for Peerless Network, Inc.

**Copy:**

Daniel Alvarez  
Julie Veach  
Deena Shetler  
Pam Arluk  
Victoria Goldberg  
Rhonda Lien  
Kalpak Gude  
Randy Clarke  
Thomas Parisi